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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

'12-MC-298

Petitioner,

v.

**PETITION TO ENFORCE DEA
ADMINISTRATIVE SUBPOENA**

**STATE OF OREGON PRESCRIPTION
DRUG MONITORING PROGRAM,**

Respondent.

Petitioner, by S. Amanda Marshall, United States Attorney for the District of Oregon, and through Leslie J. Westphal, Assistant United States Attorney for the District of Oregon, petitions this Court to enforce an administrative subpoena.

Pursuant to Local Rule 7-1, the parties have made good faith efforts to resolve the dispute but have been unable to do so.

The United States hereby petitions this Court as follows:

1. This is a proceeding brought pursuant to 21 U.S.C. § 876(c) to judicially enforce a Drug Enforcement Administration (DEA) subpoena issued under the authority of 21 U.S.C.

§ 876(a). This Court has jurisdiction pursuant to 21 U.S.C. § 876(c) and 28 U.S.C. § 1345.

2. Tyler Warner is a Diversion Investigator for the DEA, United States Department of Justice. He is assigned to the Seattle Field Office, Portland District Office. He is authorized to serve subpoenas pursuant to 21 U.S.C. § 876(b). The Portland District Office is supervised by Lori Cassity, DEA Group Supervisor, who is authorized to issue DEA subpoenas pursuant to 21 U.S.C. § 876 and 28 C.F.R. Pt. 0, Subpart R, App. § 4(a).

3. As set forth in the declaration filed with this Petition, Investigator Warner is conducting an investigation concerning possible violations of the federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, by an individual in the greater Portland area. To this end, on January 6, 2012, Investigator Warner served a subpoena, RF-12-237101, pursuant to 21 U.S.C. § 876, on the Oregon Prescription Drug Monitoring Program (PDMP), P.O. Box 14450, Portland, OR 97293-0450, Respondent in this matter. The subpoena sought a Physician Profile for all Schedule II-V controlled substance prescriptions written by the subject of the investigation from June 1, 2011 through January 6, 2012. The subpoena was issued by DEA Group Supervisor Lori Cassity on January 5, 2012. The compliance date on the subpoena was January 20, 2012.

4. As of this date, the PDMP has not complied with the subpoena. Through its counsel, the PDMP has informed the United States that it does not plan to comply with the subpoena because Oregon Revised Statute, Section 431.966(2)(a)(C) prohibits the production of

the requested materials absent a court order and a showing of probable cause. DEA administrative subpoenas must be enforced irrespective of Oregon state law because Federal law preempts the state statute and, therefore, a properly served administrative subpoena need not meet the additional requirements of Oregon state law.

5. This petition is supported by a memorandum of law.

WHEREFORE, the Petitioner respectfully requests:

1. That this Court find that Oregon Revised Statute, Section 431.966(2)(a)(C) is preempted by 21 U.S.C. § 876, to the extent that the Oregon statute imposes a requirement to obtain a court order supported by probable cause for a DEA administrative subpoena; and
2. That this Court enter an order directing Respondent to comply with all federal administrative subpoenas in their entirety; and
3. For such other relief as is just and proper.

Dated this 23rd day of August, 2012.

Respectfully Submitted,

S. AMANDA MARSHALL
United States Attorney
District of Oregon



LESLIE J. WESTPHAL
Assistant United States Attorney